IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) Crl. Appeal No.210-SB of 1995

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Khazan Singh and others Versus State of Punjab.

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(2) Crl. Revision Petition No. 517 of 1995

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Achhar Kaur Versus State of Punjab and others.

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Date of Decision: 28.3.2007

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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Present: Shri Premjit Kalia, Advocate for the appellants in Crl.Appeal No.210-SB of 1995 for respondent nos. 2 to 3 in Crl. Revision Petition No.517 of 1995.

Shri Ashutosh Hoshiarpuri, A.A.G., Punjab for the State in Crl.Appeal No.210-SB of 1995 and in Crl. Revision Petition No.517 of 1995.

Shri Munishwar Puri, Advocate for the complainant in Crl.Appeal No.210-SB of 1995 and for the petitioner in Crl. Revision Petition No.517 of 1995.

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Mahesh Grover,J.

This order will dispose of the above mentioned criminal appeal and the revision petition as both of them have been preferred against the judgment and order dated 6.3.1995 vide which Additional Sessions Judge, Amritsar (hereinafter referred to `the trial Court') convicted Khazan Singh

son of Jagat Singh, Rasal Singh son of Boota Singh and Malook Singh son of Khazan Singh, residents of village Padhri Khurd, District Amritsar (hereinafter described as `the appellants') for having committed an offence punishable under Section 304, Part-II read with Section 34 of the I.P.C. and sentenced them to undergo rigorous imprisonment for a period of five years with a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment of three months.

On 26.2.1987 at about 9.00 A.M., complainant-Achhar Kaur along with her husband-Shingara Singh and one Lal Singh was going to village Miani to see Kashmir Kaur, who was married in that village. When they reached by the side of the house of appellant-Khazan Singh, he was seen standing in the door armed with a dang. He raised a `lalkara' and exhorted the other two appellants that Shingara Singh was empty handed and they should take a revenge for causing injuries to his legs. Appellant-Rasal Singh armed with a `gandasi' and appellant-Malook Singh armed with an iron rod came there and caused injuries to Shingara Singh on his legs and hands. The complainant and Lal Singh raised an alarm, upon which the appellants ran away from the spot along with their weapons. Thereafter, Shingara Singh was removed to the hospital at Amritsar where he was admitted.

On 27.2.1997, S.I.Surinder Singh recorded the statement of complainant-Achhar Kaur on the basis of which F.I.R. was registered. The police set the investigative process into motion. The appellants were arrested and necessary interrogations made. The weapons of offence were also recovered.

Shingara Singh died in the hospital on 24.8.1987 after a lapse

of about 6 months. The offence was accordingly converted into that punishable under Section 302 of the I.P.C. and the necessary inquest was carried out. The post mortem examination was also got conducted on the dead body of Shingara Singh from Dr.R.S.Grewal, and his report is on record as Ex-PW9/A.

On completion of the investigation, the challan pursuant to the provisions of Section 173 of the Cr.P.C., was presented against the appellants. The Illaqa Magistrate, after making compliance of the provisions of Section 207 read with section 173(5) of the Cr.P.C., committed the case to the Court of Session for trial. Thereafter, the trial Court, finding a prima facie case against the appellants under Section 302 of the I.P.C., charge sheeted them to which they pleaded not guilty and claimed trial.

The prosecution, in order to establish the guilt of the appellants, examined as many as nine witnesses. In their statements recorded under Section 313 of the Cr.P.C., the appellants pleaded false implication. They also stated that the police had illegally detained them on 24.8.1987 and implicated them falsely in this case. No evidence in defence was, however, led by the appellants.

The trial Court, on appraisal of the evidence before it, came to the conclusion that no case under Section 302 of the I.P.C. was made out and went on to convict and sentence the appellants as noticed hereinabove.

Feeling aggrieved, the appellants have filed Crl.Appeal No.210-SB of 1995 for setting aside their conviction and sentence recorded by the trial Court, whereas the complainant has filed Crl. Revision Petition No. 517 of 1995 for enhancement of the sentence awarded to them.

At the out-set, learned counsel for the appellants contended that considering the nature of the injuries found on the person of the deceased, no case under Section 304, Part-II of the I.P.C. could have been made out against the appellants as all the injuries were on the non-vital parts of the body clearly eliminating any intent or knowledge to cause death.

Besides, the post mortem report reveals that the death had been caused on account of "septicemia as a result of septic wounds". The death was apparently not the immediate outcome of the injuries. In view of this, learned counsel for the appellants contended that at best, the conviction could have been under the provisions of Section 324 of the I.P.C.

On the other hand, learned counsel for the State contended that the deceased had died as a result of the injuries sustained by him in the occurrence in question. The prosecution story was supported by the complainant while appearing as PW1 and Lal Singh,PW2, who was an eye witness to the occurrence. There was, thus, no escape from the conclusion that the appellants were involved in the commission of offence and they had caused injuries to the deceased leading to his death, even though the intention to cause death may not be there. The conviction and sentence, according to the learned counsel for the State, were perfectly in order.

Shri Munishwar Puri, learned counsel for the complainant-revision petitioner submitted that the sentence awarded to the appellants is insufficient and they be awarded a higher sentence because the deceased had died due to the injuries suffered by him at their hands. The attack on the deceased was unprovoked and the fact that a number of injuries were caused with gandasi and lathis clearly shows the intention of the appellants to cause death. According to him, the sentence of five years awarded by the

trial Court was on the lesser side and he prayed that exemplary punishment be given to the appellants. He also contended that before his death, both the legs of the deceased had to be amputated on 3.4.1987 and 11.5.1987 which shows the severity of the attack by the appellants.

I have heard learned counsel for the parties and minutely perused the whole record.

PW5-Dr. Hari Dayal, who had admitted the deceased in the hospital on 26.2.1987, found the following injuries in his person:-

> "1. There was incised wound on the ventral aspect of left hand extending from the base of index finger to the ring finger. Wound also extends to the dorsal aspect of index finger. Underlying tendens of the index, middle and ring fingers are cut. X-ray shows fracture of the proximal phalanx of the index finger. Wound was stitched and pop splint was given.
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> 2. There was incised wound on the right hand on the dorsum of the hand, extending from little to middle finger. X-ray shows fracture of the head of second and third metacarpal. Wound stitched and pop splint was given.
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> 3. There was a compound fracture of the both bones of both legs. Wound was stitched and pop splint was given."

A perusal of the aforestated injuries clearly shows that none of them had been caused on the vital parts of the body of the deceased. The contention of the learned counsel for the appellants that the intent and knowledge to cause death was outrightly eliminated considering the nature of the injuries is, therefore, not entirely misplaced. All the injuries as detailed above were caused on the hands and legs of the deceased.

In this case, the death was caused on account of "septicemia as a result of septic wounds" which possibly can be either due to negligence or intentional lapse during the course of treatment given to the deceased, but ipso facto, it does not seem that it could have been the direct result of the injuries caused to him in the occurrence. The facts of the case and evidence on record reveals that the appellants had clearly an intent to cause injuries to the deceased, but the intent or knowledge to cause death was manifestly absent.

The appellants were named by the complainant and the eye witness to the occurrence. The plea of false implication is, therefore, hollow and deserves to be rejected.

Since the injuries were on the non-vital parts of the body and the intent or knowledge to cause death being missing, the conviction under Section 304, Part-II of the I.P.C. cannot, therefore, be sustained. At best, it can be said that the appellants were guilty of voluntarily causing injuries with sharp edged weapon and, therefore, they can safely be convicted under Section 324 of the I.P.C., which conviction is hereby recorded

. In this view of the matter, the sentence has to be toned down in consonance with the offence committed by them. Therefore, keeping in view the nature of injuries, they are sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs.1000/- each.

At this stage, learned counsel for the appellants drew the attention of this Court to the fact that appellant-Khazan Singh, at the time of conviction by the trial Court, was 95 years old, whereas appellant-Rasal Singh was aged 35 years and appellant-Malook Singh was aged 50 years. He contended that it was doubtful whether appellant no.1 would even be

alive as on today,but in so far as appellant nos. 2 and 3 are concerned, even they would be fairly well advanced in age and to ask them to undergo imprisonment at this stage would only be a travesty of justice. A prayer for taking a lenient view and for reduction of sentence has, therefore, been made.

The aforesaid prayer of the learned counsel for the appellants has been vehemently opposed by the learned counsel for the complainant-revision petitioner.

I have thoughtfully re-considered the matter in the light of the submissions made by the learned counsel for the appellants and the learned counsel for the complainant-revision petitioner.

As discussed above, the injuries caused were reflective of the intent not to cause death, but only to cause hurt to the deceased. The death was caused on account of the circumstances which could be attributed to various factors including the will of providence. Besides, the appellants would be fairly well advanced in age and well entrenched in life. To send them to face rigours of the imprisonment at this stage would be a self defeating exercise because it will not espouse the cause of justice.

Therefore, having regard to the totality of the circumstances of the case, I reduce the sentence awarded to the appellants to that of already undergone by them, provided they deposit a sum of Rs.one lac before the trial Court within a period of four months from today. The amount so deposited by the appellants shall be disbursed by the trial Court as compensation to the complainant-revision petitioner, in case she is alive or her legal representatives after due notice to them and after fully verifying/ establishing their identity.

It is made clear that the failure to deposit the afore-stated amount within the stipulated period will entail the revival of the conviction and sentence of three years and fine of Rs.1000/- each originally awarded by this Court for an offence punishable under Section 324 of the I.P.C. and the appellants shall be required to undergo the imprisonment forthwith by cancelling their bail bonds.

The criminal appeal and the revision petition are disposed of in the abovesaid terms.

March 28, 2007 (Mahesh Grover)
"SCM" Judge